

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

DIVISION IV

CACR05-958

March 15, 2006

LINDA REYNOLDS
APPELLANT

AN APPEAL FROM PULASKI
COUNTY CIRCUIT COURT
[CR03-1042]

V.

HON. JOHN LANGSTON, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

WENDELL L. GRIFFEN, Judge

Linda Reynolds appeals from the revocation of her probationary sentence. She argues that the State failed to present sufficient proof that she inexcusably violated the terms of her probation by failing to report to her probation officer. We disagree and affirm the revocation of her probation.

In January 2004, Reynolds received a five-year probationary sentence after pleading guilty to theft of property in Pulaski County Circuit Court. Among other things, she was ordered to report monthly to her probation officer and to pay probationary fees and restitution. On September 3, 2004, the State filed a revocation petition, alleging that Reynolds had failed to report to her probation officer and failed to pay probation fees.

A hearing on the matter was held on May 20, 2005, during which Janna Pinkston, Reynolds' Pulaski County Probation Officer, testified that Reynolds had been informed of her obligation to report monthly but that she never reported in person and had telephoned only one time. Reynolds testified that she was also on probation in Lonoke County and she

believed that, by reporting in Lonoke County, she satisfied her obligation to report in Pulaski County. The trial court found that Reynolds violated the terms of her probation by failing to report and sentenced her to serve three years in the Arkansas Department of Correction, with suspended imposition of the sentence for one year and with a judicial transfer to the Community Correction Center.

Reynolds' sole argument is that the State failed to prove that she inexcusably violated the terms of her probation by failing to report to her probation officer. In a revocation proceeding, the burden is on the State to prove by a preponderance of the evidence that the defendant inexcusably violated a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2005). We will affirm the trial court's revocation findings unless they are clearly against a preponderance of the evidence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation. *Id.* Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given to testimony, we defer to the trial judge's superior position to resolve those questions. *Id.* The State need only prove a single violation to support the revocation of probation. *Thompson v. State*, 342 Ark. 365, 28 S.W.3d 290 (2000).

Here, as Reynolds concedes that the State proved she was required to report monthly to her probation officer but failed to do so, the only issue is whether the trial court erred in determining that her failure to report was inexcusable. We hold that the trial court did not err in making that determination.

Reynolds testified that she was on probation in Lonoke County at the same time she was on probation in Pulaski County. She said that she contacted the Pulaski County Probation Office after being placed on probation, and it was her "understanding" that her Lonoke County probation officer, whom she identified as Officer Callahan, would cover both

counties. However, she admitted that she owed fines and restitution in Pulaski County and that she telephoned Pulaski County to explain why she could not pay her fines and restitution. Reynolds stated that she believed she was obligated to pay her fines to the Pulaski County office, but did not believe she was obligated to report personally to the Pulaski County office. Nonetheless, she admitted that a probation officer discussed the terms of her Pulaski County probation with her, that she signed the form, and that she also failed to report as ordered to her Lonoke County probation officer.

In short, we affirm because the trial court's decision to disbelieve Reynolds' reasons for not reporting in Pulaski County is simply a credibility determination which we will not disturb on appeal. *Lamb, supra*. The trial court was not required to believe Reynolds' assertion that, although she knew she was obligated to report to Pulaski County regarding her fines, she believed that she was not obligated to report personally to Pulaski County. In any event, even if the trial court believed Reynolds' assertion in that regard, Reynolds also admitted that she had not reported as required to her Lonoke County Probation Officer.

Despite Reynolds' testimony to the contrary, it is clear she was on notice that she was required to report to the Pulaski County Probation Office. Reynolds admitted that a probation officer read to her and that she signed State's Exhibit 2, which sets forth the conditions of her Pulaski County probation. She admitted at the hearing that State's Exhibit 2 is a document from the Pulaski County Circuit Court. Moreover, she knew the reason she was signing that form was because she had pleaded guilty to theft of property in Pulaski County Circuit Court and had thereafter been placed on probation in Pulaski County. Finally, the fact that Reynolds knew that she was to report to the Pulaski County office to pay her fines demonstrates her knowledge that she was to report to that same office to fulfill the remainder of the conditions of her Pulaski County probation. On these facts, we affirm the revocation of Reynolds' probation.

Affirmed.

GLADWIN and NEAL, JJ., agree.